

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN DAVID RODRIGUES,

Plaintiff,

vs.

CIVIL ACTION NO. 1:11CV61

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

REPORT AND RECOMMENDATION/OPINION

On April 22, 2011, in conjunction with filing a Complaint against the Commissioner of Social Security, Plaintiff filed an Application to Proceed without Prepayment of Fees and Costs [Docket Entry 2]. The Court, by order dated May 3, 2011, and after review of said application, denied Plaintiff's request to proceed *in forma pauperis*, reasoning that Plaintiff had sufficient disposable income to pay the filing fee to institute this action [Docket Entry 5]. In this Court's May 3, 2011, Order denying application to proceed without prepayment of fees and costs, the Court ordered Plaintiff to pay the fees and costs associated with instituting this action within thirty (30) days from the date of entry of the order. The Court also informed Plaintiff therein that, if the fees and costs, in the amount of \$350.00, were not paid to the District Court Clerk within that time frame, a recommendation of dismissal would be made to the District Judge.

The Court's May 3, 2011, Order denying application to proceed without prepayment of fees and costs was mailed to Plaintiff, via certified mail on May 3, 2011 [Docket Entry 5]. As noted on the return receipt, Plaintiff accepted service of the Court's order on May 4, 2011 (Docket Entry 6).

Plaintiff has not, as of this date, paid his fees and costs, in the amount of \$350.00, to the

District Clerk to institute this civil action.

28 U.S.C. §1914(a) reads as follows:

The Clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350

L.R. Gen. P. 3.01 provides the following:

The Court may authorize the commencement, prosecution or defense of any civil or criminal action or proceeding, or any appeal . . . , without prepayment of fees and costs or security, by a person who makes an affidavit that he or she is unable to pay costs or give security as provided in 28 U.S.C. §1915.

Plaintiff's affidavit was denied by this Court; he is required to pay the filing fee.

RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that Plaintiff's Complaint (Docket Entry 1) be **DISMISSED** without prejudice for failure to pay the filing fee as required by 28 U.S.C. §1914(a) and the undersigned's Order, dated May 3, 2011.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to Plaintiff.

DATED: June 14, 2011

John S. Kaul

JOHN S. KAUL
UNITED STATES MAGISTRATE JUDGE